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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
MCI TELECOMMUNICATIONS CORPORATION	)	RM-9108
	)	
Billing and Collection Services Provided	)	
By Local Exchange Carriers for Non-Subscribed	)	
Interexchange Services	)	
	)	

COMMENTS OF CONSOLIDATED COMMUNICATIONS ON MCI'S PETITION FOR RULEMAKING

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EXECUTIVE SUMMARY

The Commission should initiate a rulemaking proceeding to consider billing and collection services that LECs presently render to IXCs providing non-subscribed interexchange services as well as those offering presubscribed services.

The attempt by some LECs to raise charges for, or adversely alter the terms and conditions of, essential billing and collection services is potentially harmful in light of the fact that the LECs are themselves either already in, or are entering, the interexchange market, and may have an incentive to undermine the operations of competing IXCs. It is not practical for IXCs to take over the billing and collection functions performed by LECs, either for non-subscribed or presubscribed services. Not only would this impose considerable expenses on the competitive IXCs which IXCs affiliated with LECs would not have to bear, but it would also cause damage to the competitive marketplace and curtail consumer options. In addition, the rendering of the customer's bill by the LEC helps to ensure timely and full payment of charges.

The Commission should exercise its jurisdiction to promulgate additional rules that incorporate appropriate nondiscrimination principles and a duty on the part of LECs to negotiate the terms of billing and collection agreements in good faith.

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Consolidated Communications Telecom Services Inc. ("Consolidated"), by its attorneys, hereby submits its Comments on the "Petition for Rulemaking" ("Petition") filed by MCI Telecommunications Corporation ("MCI") on May 19, 1997 in the above-captioned proceeding. As set forth in greater detail below, Consolidated supports MCI's Petition, and requests that the Commission consider very carefully the anticompetitive effects of allowing LECs to dictate the terms and conditions of the billing and collection service offering to the direct disadvantage of interexchange carriers ("IXCs").

I. INTRODUCTION

Consolidated is an IXC authorized to provide services throughout the continental United States, and as an international reseller. Consolidated also has authority to offer alternative local services as a CLEC in the states of Missouri, Indiana and Illinois. It owns fiber optic facilities in the Midwest. Consolidated bills its subscribed, alternate billed and casual traffic by means of direct agreements with certain RBOCs and independent LECs, as well as through a clearinghouse. Fully 65% of Consolidated's revenues from provision of service to residential users is LEC-billed.

Accordingly, discontinuation of, or significant adverse changes in the charges or other material terms and conditions associated with, LEC-billing could have a drastic effect on Consolidated's business. Consolidated is a relatively small IXC in comparison to its competitors AT&T, MCI and Sprint.

Consolidated urges the Commission to initiate a rulemaking proceeding to consider billing and collection services that LECs presently render to IXCs providing non-subscribed interexchange services (*e.g.*, collect, third-party, 10XXX, and "joint use" calling card calls) as well as presubscribed services.[1] Currently, under the terms and conditions of billing and collection agreements with IXCs and independent service bureaus, LECs consolidate charges for use of non-subscribed and presubscribed interexchange services with charges for local service and send customers a single bill. MCI points out that certain LECs now seek to renegotiate these agreements at materially higher rates and are adopting a "'take it or leave it' negotiating stance."[2]

Consolidated confirms that it has also experienced this troublesome new approach in its discussions with some LECs: for example, GTE is seeking to compel IXCs to file new addenda to existing billing and collection contracts which contain terms that are generally less favorable than those in the existing agreements. In addition, Consolidated has also encountered with some LECs the same posture that MCI references in its comments.

Consolidated opposes these developments and urges the Commission to take immediate measures to avert this exercise of market power by certain LECs. The ensuing discussion

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[1]Although MCI focused its Petition only on non-subscribed interexchange services, Consolidated believes that the same arguments also apply with nearly equal force to presubscribed services. Accordingly, these Comments discuss billing and collection issues related to both types of interexchange services.

[2]Petition at 2.

demonstrates that: (i) some LECs have an incentive to hinder (unrelated) IXCs' abilities to compete in the interexchange market by means of their control of billing and collection services; (ii) IXCs could not practically take over the billing and collection functions for non-subscribed interexchange services that LECs perform and would be competitively disadvantaged if forced to take over billing and collections for presubscribed interexchange services; and (iii) the Commission should promulgate additional rules that incorporate appropriate nondiscrimination principles and a duty on the part of LECs to negotiate the terms of billing and collection agreements in good faith. Immediate attention to this issue is required to preserve competition in the long distance markets and protect emerging competition in the local markets.

II. DISCUSSION

A. <u>Certain LECs Have a Strong Economic Incentive for Undermining IXCs</u>

Certain LECs have unmistakable economic incentives to disadvantage their "new" IXC competitors. Independent LECs such as GTE *currently* provide interexchange services within and outside their services areas. They are direct competitors of IXCs and have undeniably powerful incentives to manipulate the terms and conditions of billing and collection services in order to increase the operating costs of IXC competitors. Regional Bell Operating Companies ("RBOCs") are direct competitors of IXCs in out-of-region interexchange markets and are actively in the process of seeking authority to enter in-region, interexchange markets. RBOCs have a long-term interest in undercutting IXCs, both by taking actions that will unnecessarily[3] increase the IXCs' operating costs

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[3]*I.e.,* without a demonstrable corresponding increase in cost to the LEC for providing the service. There is no basis for assuming that this sudden shift in approach by certain LECs to the offering of this service is related to a sudden, and dramatic shift in those LECs' costs. Rather, as noted by MCI in its Petition, there is every reason to presume that this shift is strategic, and

and by denying IXCs access to vital customer data. Strategically, raising the cost of an essential service offering such as billing and collection, and imposing additional adverse terms and conditions on IXC purchasers of the service can only enhance the value of the RBOCs' out-of-region interexchange operations and their anticipated in-region interexchange operations.

Moreover, it is possible for certain LECs to undermine the operations of their IXC competitors without compromising their own operations. While some LECs could impose severe hardships on IXCs by forcing them to direct-bill customers,[4] as explained more fully below, those LECs would by no means impair or impede their own operations in the process. Accordingly, some LEC have an incentive to become increasingly less cooperative in regard to billing and collection. In order to disadvantage their competitors, such LECs may be eager to sacrifice a portion of the short-term revenues they derive from providing billing and collection services to IXCs in exchange for the much more significant prize of capturing long-term market share in the interexchange marketplace. Moreover, LECs have the ability to "condition" the long distance market now, even before they themselves enter that market by raising existing IXCs' costs of doing business.

B. LECs Play an Essential Role in the Provision of Billing and Collection Services to Both Non-Subscribed and Presubscribed IXCs

The billing and collection services that LECs perform for IXCs are absolutely essential to the continued development of the competitive interexchange market. In view of the relatively

prompted by external considerations such as existing or planned direct competition with IXCs.

[4]In the event that IXCs choose not to direct-bill customers, but instead agree to pay the higher rates that some LECs propose, those LECs will reap supracompetitive profits and substantially increase the IXCs' operating costs. This can only have an adverse effect on end-users, particularly residential customers who will ultimately find their long-distance costs increased, and their range of choices curtailed.

narrow margins in the highly competitive interexchange markets, any LEC effort to raise rates for billing and collection services will affect an IXC's ability to compete. As shown below, IXCs cannot realistically take over billing and collection functions for non-subscribed calls and would have considerable difficulty doing so for presubscribed services. Because no suitable alternative exists for LEC billing and collections, there is no competitive force to prevent certain LECs from raising their prices directly, or indirectly through contractual provisions that impair the IXC's ability to operate efficiently.

1. Only the LEC Has Access to the Necessary Customer Billing Name and Address Information to Bill and Collect for Use of Non-Subscribed Interexchange Services

When a customer places a non-subscribed call, the IXC handling the traffic does not have the billing name and address ("BNA") of the party to be billed. The IXC knows only the telephone number of the billed party. Ordinarily, that individual has no pre-existing relationship with the IXC, and possessing the party's telephone number does not enable the IXC to bill that customer without considerable additional exertions. Traditionally, there have been few problems with this system because LECs have billed and collected amounts due to IXCs for such calls under common billing and collection agreements. However, if LECs prospectively refuse to enter into such agreements with IXCs except at uneconomic rates and terms, providers of non-subscribed interexchange services will be severely disadvantaged in the first instance by their lack of access to customers' BNA data maintained by the LEC.[5] Some LECs may attempt to use their bottleneck control of BNA data as a weapon against IXC competitors. As MCI properly notes, this information can be gathered only

[5] Petition at 2, 6.

by posing expensive BNA queries to LECs (typically around \$0.20/query, but ranging up to \$0.80/query).[6] To the extent that the use of the resulting BNA is limited under a given LEC tariff to a "per call basis" (*i.e.,* limited to the call queried and cannot be used for other calls placed by the same customer), this has a dramatic "multiplier effect".[7]

2. IXCs Cannot Economically Render Bills for Non-Subscribed Interexchange Services or for Presubscribed Interexchange Services

The cost to an IXC of direct-billing customers is relatively high[8] and is quite likely to *exceed the amounts owed* to the IXC in the case of non-subscribed services in which each call to be billed requires a costly BNA query. For a variety of reasons, users of non-subscribed services typically generate only low calling volumes. Such reasons may include: (i) need: users often place collect and third-party billed calls only when no other alternative method of payment is available; (ii) sampling: customers may sample many long distance carriers without concentrating their calls on the network of a single IXC; and (iii) opportunity: customers do not place a large number of long distance calls in general.

Additionally, in the absence of LEC billing and collection agreements for non-subscribed traffic, there would be an incentive for a customer to place each non-subscribed call over a *different* IXC network to minimize the chances of being billed. Compelling IXCs to issue separate bills for

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[6]As noted by MCI, the tariffed BNA charges bear no apparent relationship to the LECs' costs in providing the service, and are largely unreasonably high. Petition at 8.

[7]Petition at 8.

[8]MCI estimates that its costs in generating and sending an invoice to a non-subscribed services customer would average \$3.47 per customer. Consolidated concurs in this estimate: by its own analysis, Consolidated find that it would cost in excess of \$3.00 per customer to render such a billing.

the many customers that place non-subscribed calls, but that usually do not incur enough toll charges to offset billing costs, simply would lead not only to inefficient use of network resources, but would also contribute to fraud and abuse of service problems.

IXCs would experience similar problems separately billing *presubscribed* services as the revenues generated by the average end user approach the average cost of producing customer bills. IXCs would not be able to perform their own billing and collection functions economically if their end users on average make only low to moderate use of presubscribed interexchange services. These IXCs would be forced to endure losses or impose some remedial device such as placing a surcharge on the long distance bills of low-use consumers to cover billing costs. Either result would make them far less competitive in the market and harm competition overall.

On the other hand, when IXCs contribute to the billing and collection costs of LECs, and LECs provide the service under reasonable terms and conditions, all parties benefit. With such cooperative arrangements in place, IXCs are able to serve all sorts of customers without regard to traffic volumes, while LECs largely are able to offset their mailing and processing costs with revenues from IXCs — costs that LECs would incur in rendering bills for local service in any event. Plainly, the current practice of consolidating local and long distance charges on the same bill is most productive result for both LECs and IXCs, as well as the consumer.

3. Only the LEC Bill Has Sufficient Credibility with End Users to Ensure Prompt Payment for Non-Subscribed and <u>Presubscribed Interexchange Services</u>

Customers generally treat the bill that they receive from the LEC seriously and, consequently, delinquency rates for LEC bills are low. Having operated as the sole provider of telephone service in their service areas for generations, LECs have accumulated tremendous credibility with customers. Of course, that credibility was one of the benefits associated with being the monopoly provider of all retail telephone service. New entrant long distance providers have not had similar opportunities for brand-name exposure and, when billing customers directly, typically suffer high delinquency rates and substantial uncollectibles, undermining their ability to compete in the interexchange market. Providers of non-subscribed services are especially vulnerable, because customers have no relationship whatsoever with these IXCs. The Commission should recognize that, because of their historic monopolies, LECs are in a unique position to issue bills for non-subscribed and presubscribed services that customers will pay.

Moreover, the overwhelming majority of customers prefer to receive only one bill for all telephone service. Over the many years in which LECs, either as part of the Bell System or on their own after divestiture, issued consolidated local and long distance bills, customers have become accustomed to receiving a single bill and generally resist separate billing. This contributes to IXCs' difficulties in recovering payment for their services. Especially in the case of residential services, the bad debt ratio is high, and collection can be expensive, time-consuming and difficult.

C. The Commission Must Act with Dispatch to Protect the InterLATA Market

The non-subscribed segment of the interexchange market is rapidly expanding and has become, as MCI points out, the primary vehicle for consumers to sample new interexchange services and, for low-income consumers, common method to complete most long distance calls.[9] Due to the large number of customers that place non-subscribed calls over IXCs' networks, the costs of terminating this type of traffic are substantial, even though individual bills are often quite small. If

[9]Petition at 3-4.

these costs go unrecovered, IXCs (except perhaps those affiliated with LECs) would ultimately be forced to discontinue non-subscribed services. The Commission must act to ensure that the competitive market for non-subscribed calling is not disrupted by the anti-competitive strategies of some LECs that would effectively end billing and collection agreements for non-subscribed services by dramatically increasing the rates charged for these functions.

The market for presubscribed interexchange services would be similarly impacted in a negative fashion if certain LECs implement onerous contractual provisions. Small or less profitable IXCs would be especially vulnerable if some LECs increase the costs of billing and collection and are likely to exit or may decide not to enter the market at all, reducing the number of competitors and leaving only the larger, more well-established IXCs in the market. This would ultimately have adverse effects on consumers. Many small IXCs serve niche markets that would be under served, or served only at less competitive rates, if these smaller IXCs are unable to flourish. The Commission should initiate the rulemaking proceeding requested by MCI and, in that context, craft rules that would avert this inevitable market dislocation.

D. The 1996 Act Provides Authority for the Commission to Ensure the Availability of Billing and Collection Services to all Telecommunications Providers

In 1986, the Commission deregulated billing and collection services provided by LECs.[10] Specifically, the Commission determined that "billing and collections for a communications service that the LEC offers individually or as a joint offering with other carriers is an incidental part of a

[10] *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150 (1986).

communication service."[11] The Commission further distinguished billing and collection for the offering of another unaffiliated carrier, finding that such service "is not a communication service for purposes of Title II of the Communications Act."[12] The Commission noted that it retained ancillary jurisdiction under Title I to regulate billing and collection to IXCs, but declined to exercise jurisdiction at that time.[13]

Since 1986, the Commission has found several occasions to exercise jurisdiction over billing and collection matters. In 1993, for example, the Commission found that the provision of BNA information by LECs is a communications common service subject to the Commission's Title II jurisdiction.[14] More recently, the Commission has clarified that provision of a customer's BNA information to its presubscribed carrier is required by its "equal access rules."[15] Thus, despite the 1986 deregulation of billing and collection services, the Commission has shown the willingness and the ability to address perceived incidents of discrimination in the provision of billing and collection functions as circumstances dictate. In light of the changed competitive conditions identified below and recent efforts by some LECs to leverage their power over billing and collection functions to enter the long distance market, the Commission should now respond by exercising its jurisdiction

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[11] *Id.* at ¶ 31.

[12] *Id.* at ¶ 33.

[13] *Id.* at ¶¶ 35, 37.

[14] *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478, 4481 at ¶ 16 (1993).

[15] *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Third Order on Reconsideration, 11 FCC Rcd 6835, 6857 at ¶ 40 (1996).

again and extending the nondiscrimination principles it promulgated in the 1993 and 1996 rulemakings to all billing and collection services.

III. RELIEF REQUESTED

The public interest favors grant of MCI's Petition and the commencement of a rulemaking proceeding on LEC billing and collection services. The Commission should adopt reasonable nondiscrimination standards to assure that billing and collection services are available under reasonable rates, terms and conditions. In summary, the Commission must send a signal to the marketplace that billing and collections services may not be used to leverage control as LECs enter long distance markets.

IV. CONCLUSION

For reasons set forth above, the Commission should grant the Petition and initiate the rulemaking proceeding requested by MCI.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July 1997, copies of the foregoing COMMENTS OF CONSOLIDATED COMMUNICATIONS ON MCI'S PETITION FOR RULEMAKING; RM-9108, have been sent via Messenger** or First-Class Mail, U.S. postage prepaid, to the person(s) on the attached service list.

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